IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.2721 of 2006

Commissioner of Income-Tax
Chennai. ... Appellant

Vs.

Suresh B.Mehta ... Respondent

The above T.C.(Appeal) is preferred under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 28.4.2006 made in ITA No.1261/Mds/2002 for the assessment year 1997-98 and against the order dated 14.3.2002 in ITA 156/01/02 of the Commissioner of Income Tax (Appeals) XII, Chennai-34 and against the order dated 22.2.2000 in PAN/GIR No.741.S. of the Joint Commissioner of Income Tax Special Range IX, Chennai -34, PAN GIR 741 S.

For Appellant : Mr.J.Narayanaswamy

J U D G M E N T

(Judgment of the Court was made by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal made in ITA No.1261/Mds/2002, dated 28.4.2006.

2. The Revenue is the appellant. The assessment year involved is 1997-98. The assessee is carrying on business of manufacture and sale of jewellery, gold ornaments at Chennai under the name of Bapalal & Co. and also exporting diamonds and precious stones from Bombay under the name of Suresh Bapalal. During the relevant assessment year, he claimed Rs.49.75 lakhs as deduction under Section 80HHC by treating the export as a separate business. The assessing officer restricted the benefit to Rs.37.43 lakhs on the ground that the entire business of local sale and export sale is one and the same, thereby calculating the deduction on the basis of the total turnover of all the business of the assessee. Aggrieved by the same,

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the assessee filed an appeal before the Commissioner of Income-tax (Appeals), who, by order dated 14.3.2002, allowed the appeal. The revenue took up the matter to the Tribunal and the Tribunal dismissed the appeal on the ground that appropriate working has been given by the assessee by filing Form 10CCA in support of his claim and the export profits are arrived at by deducting expenditure relating to export. Hence, the present appeal by the Revenue raising the following substantial question of law:-

> " Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of sec.80HHC (3) are not applicable to the assessee's case ? "

3. Mr.J.Narayanaswamy, learned standing counsel appearing for the Revenue fairly submits that the issue is squarely covered against the Revenue by the decision of this Court in Commissioner of Income-tax v. Rathore Brothers [(2002) 254 I.T.R. 656].

4. In this regard, it is apt to refer clause (b) of sub-section (3) of Section 80HHC of the Income-tax Act, 1961, which reads as follows:-

> 80HHC. (1) Where an assessee, being an Indian company or a person export out of India of any goods or merchandise to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction to the extent of profits, referred to in sub-section (1B), derived by the assessee from the export of such goods or merchandise:
> ...
> (2) ...
> (3) For the purpose of sub-section (1), -
> (a) ....
> (b) where the export out of India is of trading goods, the profits derived from such export shall be the export turnover in respect of such trading goods as reduced by the direct costs and indirect costs attributable to such export;
> (c) ....
>
> (emphasis supplied)

5. This Court, in Commissioner of Income-tax v. Rathore Brothers [(2002) 254 I.T.R. 656], referred supra, finding that the assessee therein had maintained separate accounts and it had maintained its trading receipts and profit and loss accounts separately for export sales and domestic sales and that there was sufficient material supported by all the necessary documents to show that the deduction claimed was entirely due to export, held that there was no warrant

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for disallowing any portion of the export earnings pro rata by invoking clause (b) of sub-section (3) of section 80HHC of the Income-tax Act, 1961 and the purpose of the clause was to disallow a part of the allowance under that section only when the entire deduction claimed could not be regarded as being relatable to exports.

5. In the instant case also, as could be seen from the order of the Commissioner as well as the Tribunal, the assessee was maintaining separate accounts independent of his other business and that there is no intermingling of expenditure or interlacing of funds of any kind whatsoever. It could also be seen that the assessee had also complied with the legal requirements by filing Form 10CCA in support of his claim.

In view of the above, we do not find any error or illegality in the order of the Tribunal. Accordingly, finding no question of law much less a substantial question of law that arises for consideration, the appeal stands dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. THE ASST. REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
RAJAJI BHAVAN , IIIRD FLOOR,
BESANT NAGAR, CHENNAI.

2. THE COMMISSIONER OF INCOME
TAX (APPEALS XII), CHENNAI.

3. THE JOINT COMMISSIONER OF
INCOME TAX SPECIAL RANGE IX,CHENNAI.

4. THE ASST. COMMISSIONER OF
INCOME- TAX, CENTRAL CIRCLE IV (2), CHENNAI.

5. THE COMMISSIONER OF INCOME TAX ,
CHENNAI.

SSV (CO)
km/19.2.

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